

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Telecommunications Act of 1996;)	CC Docket No. 96-115
)	
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information :)	
)	
Petition for Rulemaking to Enhance Security And Authentication Standards for Access to Customer Proprietary Network Information)	RM-11277

COMMENTS OF LEAP WIRELESS INTERNATIONAL, INC.

Leap Wireless International, Inc. and Cricket Communications, Inc. (collectively, "Leap") submit these comments in response to the above-captioned Notice of Proposed Rulemaking ("Notice"). Spurred by a petition filed by the Electronic Privacy Information Center ("EPIC"),¹ the Commission asks in the *Notice* whether it should take additional steps to further protect the privacy of customer proprietary network information ("CPNI") that is collected and held by telecommunications carriers.

Leap understands and supports the Commission's efforts to address the privacy problems raised by the "pretexting" practices of data brokers. However,

¹ Petition of the Electronic Privacy Information Center for Rulemaking to Enhance Security and Authentication Standards for Access to Customer Proprietary Network Information, CC Docket No. 96-115 (filed Aug. 30, 2005) ("EPIC Petition").

Leap does not believe that changes to the existing CPNI rules are necessary at this time. Wireless carriers have every incentive to combat pretexting and to do their utmost to protect their customers' CPNI. These carriers are continuing to implement on a voluntary basis security practices intended to combat what are essentially criminal acts by third parties. And they are required by the Commission both to comply with the Commission's comprehensive CPNI rules and to certify that compliance, including a description of the actions they take to ensure the confidentiality and protection of their customers' CPNI.

On the other hand, Leap is concerned with the countervailing costs and burdens that would attend the imposition of additional regulation that would be "overkill" in this context -- particularly for mid-sized, regional and smaller carriers. Leap, for example, offers innovative, flat-rated service to consumers because it has one of the lowest cost structures in the Commercial Mobile Radio Services ("CMRS") industry. The Commission should be extremely cautious in mandating new requirements that could alter such cost structures and require wholesale changes to carriers' billing systems, computer interfaces at the point of sale, call centers and similar operations. Ultimately, such changes could result in higher prices to consumers when there is in fact little evidence of a wide-scale problem with CPNI protection. That is a poor public policy result.

The Commission has recognized that there are tradeoffs with respect to its CPNI regime and historically has been committed to "carry[ing] out vigilantly Congress' consumer protection and privacy aims, while simultaneously reducing the

burden of carrier compliance with Section 222 by eliminating unnecessary expense and administrative oversight where customer privacy and control will not be sacrificed.”² The Commission should not reverse course on that approach here.

I. BACKGROUND

Leap has led the wireless industry in offering true flat-rate pricing: Leap offers its customers unlimited mobile wireless services within a local service area for a reasonable flat monthly rate (plans range from \$30 to \$45) and without requiring its customers to enter into a long-term contract, to meet a credit standard, or to agree to early termination fees. This pricing structure has introduced the benefits of mobile wireless services to many consumers who might otherwise be unable to obtain them.³ Leap also draws customers who want more predictable bills or who want to avoid large overage charges. Leap has been able to provide high-quality, low-cost mobile wireless service in large part because of its business model under which it (i) has deployed a high capacity, state-of-the-art CDMA network, (ii)

² Implementation of the Telecommunications Act of 1996; Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; Implementation of Non-Accounting Safeguards of sections 271 and 272 of the Communications Act of 1934, as amended, *Order on Reconsideration and Petitions for Forbearance*, CC Docket Nos. 96-115 and 96-149, 14 FCC Rcd 14,409, ¶6 (1999).

³ 69 percent of Leap’s subscribers have household incomes of less than \$35,000 per year and 46 percent are Hispanic or African-American. The usage patterns of Leap’s customers are also vastly different from the usage of customers of other carriers: the average Leap customer uses approximately 1,450 minutes per month (nearly an hour a day, every day), while the industry average is about half that number. Indeed, approximately 50% of Leap’s customers no longer have landline phone service, and 90 percent use Leap as their primary phone service—far outpacing the industry average on both counts.

has streamlined its operations, and (iii) is able to acquire customers at costs substantially below the costs of other industry leaders.

With respect to the issue of customer CPNI, Leap has certified its compliance with the Commission's CPNI rules. All Leap employees must adhere to privacy policy procedures that are intended in part to protect the disclosure of customer account information. Leap also requires its vendors that render bills and its staff at customer care centers to execute agreements that include provisions addressing the protection of customer account information. Leap does not use CPNI in its marketing efforts and does not disclose CPNI to any third parties except in response to a lawful court order or subpoena.

II. THERE IS NO NEED FOR THE COMMISSION TO ADOPT ADDITIONAL CPNI REQUIREMENTS

With respect to the issues raised in the *Notice*, Leap would note at the outset that the scope of the pretexting problem that has in part been the impetus for this proceeding is largely unknown. Leap has more than 1.7 million customers, but to Leap's knowledge, no customer has ever been the victim of pretexting. Leap has never received a customer complaint on the issue. Furthermore, after press reports on the pretexting phenomenon, Leap contacted several Internet data brokers as an anecdotal sampling exercise to assess whether they were in possession of call records of Cricket customers. None of the brokers contacted had any Cricket customer data for sale.

In any event, Leap believes that the comprehensive set of rules that the Commission has already adopted amply protects against unauthorized CPNI

disclosure. As the *Notice* recognizes, the Commission's rules require telecommunications carriers "to obtain a customer's knowing consent before using or disclosing CPNI,"⁴ as well as "a set of rules designed to ensure that telecommunications carriers establish effective safeguards to protect against unauthorized use or disclosure of CPNI."⁵ Against this backdrop, the additional security measures proposed by EPIC are either unnecessary -- because they already encompassed by voluntary carrier practices -- or grossly burdensome to implement.

Leap, for example, already provides its customers -- for free -- with the option of adding a password to his or her account, as do many other carriers.⁶ That consumer-set password system is a useful CPNI safeguard, but it is already being addressed by the marketplace; it need not be enshrined in regulation. Indeed, doing so could have real consumer downsides. The *Notice* acknowledges that customers may not want to keep track of an additional password (an observation that corresponds to Leap's own experience with its customers), and further, that password systems can invite fraudulent requests for "lost passwords."⁷

EPIC also proposes requiring audit trails such that carriers must record all instances when a customer's records have been accessed.⁸ EPIC does not identify any specific deficiencies with the current audit capabilities of wireless carriers that

⁴ *Notice* at ¶ 6.

⁵ *Id.* at ¶ 7 (*citing CPNI Order*, 13 FCC Rcd at 8195, ¶193).

⁶ *See id.* at ¶ 15.

⁷ *Id.* at ¶ 15.

⁸ *Id.* at ¶ 17.

would merit such a requirement. Yet, for Leap and many other carriers, EPIC's proposal would be almost impossible to implement. Leap, for example, operates a dozen separate databases that include customer information. Indeed, developing the application that would connect real-time data from Leap's switches to number portability databases to indirect dealer locations would be the greatest information technology challenge Leap has ever faced – but with no reasonable prospect that its customers would be any better protected.⁹

The Commission is right to be vigilant with respect to CPNI protection and enforcement. But the agency should not impose additional costly regulation in anticipation of problems that are not well-documented as an evidentiary matter, and that appear to be adequately addressed by the Commission's current rules. The proposals in the *Notice* should be rejected.

Respectfully submitted,

/s/
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⁹ In fact, the Commission rejected this exact proposal in 1999, finding that it “would generate massive data storage requirements at great cost.” *Reconsideration Order* at ¶ 127. The Commission reasoned that because “it is already incumbent upon all carriers to ensure that CPNI is not misused and that [FCC] rules regarding the use of CPNI are not violated,” the costs of the rule could not be justified. *Id.* From Leap's perspective, that logic remains sound.

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